

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**



***PRO SE* CIVIL  
LITIGATION/HABEAS  
CORPUS GUIDE**

**April 2017**



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**PLEASE NOTE THAT ALL FORMS REFERENCED IN THIS GUIDE ARE  
AVAILABLE UPON REQUEST TO THE CLERK’S OFFICE**



# I. INTRODUCTION

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This section will explain:

- How to use this *Pro Se* Guide
- What court staff can and cannot help you with
- Where you can find the laws and rules that apply to your case
- Your responsibilities when you represent yourself
- How to find an attorney who can represent you

## A. PURPOSE OF THIS GUIDE

A *pro se* party is a person who represents himself or herself in a lawsuit. Most *pro se* parties have difficulty understanding the legal process and legal terms that may be used during a case.

This Guide is intended to provide some basic information to assist *pro se* parties in understanding generally how a legal case progresses, some of the more common court procedures that a case may involve, and certain responsibilities parties may have in a case. The Guide also includes a glossary of basic legal terms that may be used during a case. See Appendix A, Glossary of Terms.

The Guide identifies documents you may need to file in a case. Forms and suggested formats for these documents are available at the court clerk's office, in most libraries in the state and federal correctional facilities located in New Hampshire, and on the court's website: [www.nhd.uscourts.gov](http://www.nhd.uscourts.gov). If you need a document that you cannot find at one of these locations, you can prepare the form yourself as outlined in Local Rule 5.1. See Local Rule 4.3(c).

*Pro se* parties, like attorneys who practice before this court, must comply with all applicable rules and laws, including the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Rules for the United States District Court for the District of New Hampshire, the Administrative Procedures for Electronic Case Filing ("ECF"), and other rules or laws which apply to your case.

## B. ROLE OF COURT STAFF IN A *PRO SE* CASE

The court clerk's office is open from 8:30 a.m. to 4:00 p.m. each business day. Although the clerk's office staff can provide you with general information about court rules and how the process works, they are prohibited by law from:

- giving you legal advice,
- explaining how court rules apply to your case,
- recommending a course of action,

- predicting a judge’s decision on any given matter, or
- explaining the meaning of a court order or judgment.

Also, the judges of this court cannot give you legal advice.

You are prohibited from all private communications with the judge assigned to your case. This is known as “*ex parte* communication.” *Ex parte* communication occurs when one of the parties to a lawsuit, or when that party’s attorney, exchanges information with the judge without the opposing party being present or without the knowledge and consent of the opposing party.

Because of this prohibition, a judge will refuse, with very few exceptions, to speak or otherwise communicate *ex parte* with any party, or that party’s attorney, regarding a pending case. **You may not communicate directly with a judge by letter.** Any communication between a litigant and the assigned judge must be made by formal pleading, such as a motion or objection, and may not be made in letter format. Local Rule 77.6. Additionally, a copy of the pleading must be sent either to the opposing party or that party’s counsel, or must be presented in person in the presence of all parties to the action.

## **C. ACCESS TO FEDERAL LAWS AND PROCEDURES AND THIS COURT’S LOCAL RULES OF PROCEDURE**

As a *pro se* party, you must become familiar with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, this court’s local rules and administrative procedures for ECF. These rules explain the general procedural requirements for litigating cases in all federal courts and hard copies are available for you to use in the clerk’s office main lobby. They are also available on the court’s website.

The local rules of this court are available for purchase at the clerk’s office for \$4.50 for a book version. Federal laws can be found in the United States Code (abbreviated as “U.S.C.”). *Pro se* parties should be aware that the court’s website also contains frequently used forms, frequently asked questions, general information, and other useful reference links.

Many public libraries have computers with internet services that are available to the public for reviewing these publications. For incarcerated *pro se* parties, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the local rules of this court should be available in the library of all federal and state correctional institutions located in New Hampshire.

## **D. CAUTIONARY NOTE**

Self-representation carries certain responsibilities and risks that *pro se* parties should be aware of before they file a case. Individuals who are considering representing themselves are encouraged to carefully review the risks associated with self-representation and to educate

themselves regarding potential consequences. Even if you would like to represent yourself, it may help to talk to an attorney who can explain some of the risks applicable to your particular case.

Rule 11 of the Federal Rules of Civil Procedure prohibits filing lawsuits that are clearly frivolous or filed merely for purposes of harassment. If after reviewing your complaint the court determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, **it may impose sanctions against you, including ordering you to pay a fine to the court or to pay the legal fees of the person against whom you filed the lawsuit.**

In certain types of cases, if you lose you may be required to pay the legal fees of the winning party. In all cases, if you lose you may be required to pay some of the costs the winning party incurred in the course of the lawsuit. See this Guide § VI(B), “Bill of Costs.”

## **E. REQUIREMENTS AND RESPONSIBILITIES OF THE *PRO SE* PARTY**

The following list of responsibilities a *pro se* party has when pursuing a civil case before this court is not intended to be complete and only provides a few examples of the way *pro se* parties are expected to act when filing and pursuing an action in this court:

1. You are required to diligently prosecute your case. Unless and until you obtain an attorney to represent you, it is your responsibility to do everything necessary to prepare your case for trial. This includes, but is not limited to, responding to discovery requests and motions. It is also your responsibility to present your case in court during the trial.
2. Do not expect any instructions from the court explaining procedures for pursuing your lawsuit. If you fail to follow established procedures, your case may be dismissed for failure to properly and diligently pursue your case.
3. You are required to give the defendant's attorney (or the defendant, if the defendant is also appearing *pro se*) copies of all pleadings and motions filed with the court. Likewise, the defendant or the defendant's attorney is required to give you copies of all pleadings and motions filed on behalf of the defendant. This requirement is also referred to in the rules as “serving” the opposing party with copies of documents filed with the court.
4. You must keep the court and the defendant advised of any change in your address or telephone number. Failing to do so immediately may result in sanctions, which may include the dismissal of your case.
5. You should keep a copy of all documents filed with the court for your own records. Please note that the court clerk's office charges fifty cents (.50¢) per page for all copy requests and that this fee applies even when the copies are requested by a party to a case.

## **F. ALTERNATIVES TO PROCEEDING *PRO SE***

Most people who file and pursue litigation in this court employ an attorney, admitted to both the New Hampshire Bar and the bar of this court. These attorneys have appeared in court, and are familiar with the rules of procedure that govern court processes.

Some attorneys may be willing to accept a reduced fee or lenient fee payment schedule. Other attorneys may be willing to accept your case on a contingent fee basis, which means the attorney would receive a fee based upon a percentage of your recovery if you win your case and would receive nothing if you do not win. Some attorneys also offer “limited representation,” meaning that they may help you evaluate your case, or draft a pleading, without requiring that you hire them for the entire case. Local Rule 83.7. Finally, in some limited circumstances the other side may be required to pay your attorney’s fees if you win your case.

If you would prefer to have an attorney represent you but you are unable to retain one, you should consider contacting the following services which, in some cases, can provide free or low cost legal assistance:

**New Hampshire Bar Association Lawyer Referral Service**  
**(603) 229-0002**

**website: <http://www.newhampshirelawyerreferral.com/>**

**Legal Advice and Referral Center**  
**(800) 639-5290 or (603) 224-3333**

**website: <http://www.nhlegalaid.org/about/legal-advice-and-referral-center>**

**New Hampshire Legal Assistance**  
**(603) 224-4107**

**website: <http://www.nhla.org/>**

**Disabilities Rights Center Inc. (for disability-related cases)**  
**(603) 228-0432 or (800) 834-1721**

**website: <http://www.drcnh.org/>**

**PLEASE NOTE:** If you are represented by an attorney, you may not file pleadings in your case unless the court grants a motion allowing you to file a *pro se* pleading, you are filing a motion related to the status of your counsel, or your attorney is providing limited representation and you are otherwise acting *pro se*. See Local Rule 4.3(e).

## **G. WHO YOU MAY REPRESENT AS A *PRO SE* PARTY**

If you do not want an attorney or are unable to find an attorney to represent you, you have the right to pursue your claims in court by appearing *pro se*. As a *pro se* party, you are representing **only yourself and presenting only your claims and defenses**. Under the law, you cannot speak for another person or other entity such as a company, club, association, or trust (unless you are the sole beneficiary of the trust). You may not represent a class of people in a class action lawsuit. See Local Rule 83.2(d) & 83.6(b).

A *pro se* party may not authorize another person who is not an attorney and a member of the bar of this court to appear for them. This includes a spouse, relative, or any other party on the same side who is not represented by an attorney. This means that each *pro se* party must personally sign the complaint and all additional pleadings they file with the court. Each *pro se* party must also personally appear in court when ordered to do so for conferences, hearings, trials, or other matters.

## **H. ELECTRONIC CASE FILING INFORMATION**

The court has the ability to accept pleadings filed electronically through the Internet. A non-prisoner who is a party to a civil action and who is not represented by an attorney may file a motion to obtain an Electronic Case Filing (ECF) login and password. A form motion to obtain a login and password for ECF is available in the clerk's office and on the Frequently Used Forms section of the court's website, and it includes both the motion and the registration form. Your ECF registration form must be filed with the motion to obtain an ECF login and password.

Before filing your motion to obtain an ECF login and password, you should make sure that you have the computer systems needed to file and receive electronic documents.

If you are permitted to file electronically, you will be required to follow the court's Supplemental Rules for Electronic Case Filing, which are located in Appendix A to the Local Rules. In addition, you will need to obtain a PACER account to use the ECF system. You can obtain a PACER account by calling the PACER service center at (800) 676-6856 or (210) 301-6440 or you may register for a PACER account online at <http://pacer.psc.uscourts.gov>.

## II. FILING A LAWSUIT

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This section will explain:

- How to figure out which court to file your case in
- What you need to file to start your lawsuit, which may include:
  - Complaint, Petition for Habeas Corpus, or Motion to Vacate
  - Filing Fee or Motion to Proceed *In Forma Pauperis*
  - Summonses for each defendant
- The format your documents should follow
- Where to file your documents

### A. JURISDICTION – ARE YOU IN THE RIGHT COURT?

The United States District Court for the District of New Hampshire is a federal trial court. Federal courts only have jurisdiction, or legal authority, to hear certain types of cases. As is the case in all federal trial courts, this court is generally authorized only to hear cases that fall into the following four categories:

1. Those that deal with a question involving the United States Constitution;
2. Those that involve questions of federal law (as opposed to state law, unless there is a state law claim related to a federal claim being made, in which case the court may agree to consider it);
3. Those that involve the United States as a party, whether as a plaintiff or defendant; and
4. Those that involve a dispute among residents of different states with an amount in controversy exceeding \$75,000.

If your case does not fall under any of these categories, you should not file it in this court.

### B. WHAT TO FILE

#### 1. Complaint

The complaint is the document that a plaintiff files with the Clerk of Court to initiate a lawsuit. Only the original is filed with the court. See Appendix D, Sample Complaint Format; Appendix E-1, Complaint Form; Appendix E-2, Instructions & Complaint Form for Person in Custody. A fillable PDF version of the Complaint Form is also available on the court's website. All complaints should contain:

- a. A caption or heading specifying the court in which the suit is brought and the

names of the parties;

b. A title, simply "Complaint" or, if a jury trial is requested, the demand should be made immediately following the title to read "Complaint with Jury Demand";

c. A numbered paragraph (or paragraphs if there is more than one plaintiff) containing the name and address of (each) plaintiff;

d. A numbered paragraph (or paragraphs if there is more than one defendant) containing the name and address of (each) defendant;

e. A numbered paragraph stating why the court has jurisdiction, or legal authority, to hear this case (see explanation of "jurisdiction" in Section II(A) of this guide);

f. Numbered paragraphs each containing a statement of those facts that are alleged to have caused the damage claimed.

- These allegations, or claims, should be concise and clearly written.
- There should be a separate numbered paragraph for each factual allegation made.
- The statement of facts should include a description of what the defendant(s) did or failed to do and how those acts or omissions caused injury or damage, as well as a description of any injury sustained and what medical treatment, if any, was required.
- It is important to be as specific as possible in stating the facts.
- Names, dates, and events should be described accurately and as succinctly as possible.
- Failure to allege facts demonstrating that each defendant was personally involved in and/or responsible for the alleged incident or harm may result in dismissal of that defendant or the case;

g. A closing or final paragraph, which is not numbered (note: this is the only paragraph in the complaint that is not numbered), outlining the relief being asked of the court. This can be money or something the plaintiff wants the court to do to correct the situation (or both); and

h. The plaintiff's original signature over the plaintiff's printed/typed name (followed by the words "*pro se*"), address, and phone number. If there is more than one plaintiff, the complaint must contain an original signature for each plaintiff.

## **2. Filing Fee or Application to Proceed Without Prepaying Fees or Costs**

### **a. Filing Fee**

A \$400.00 fee (\$350.00 filing fee plus \$50.00 administrative fee) is required when filing a complaint. You may use a credit or debit card, money order, cashier's

check, or cash to pay the filing fee. Cashier's checks and money orders should be made payable to "Clerk, U.S. District Court." A personal check is not an acceptable form of payment. You should note that filing fees sometimes are changed. A current list of filing fees is available on the court's website: [www.nhd.uscourts.gov](http://www.nhd.uscourts.gov) under the Court Information tab, and in the clerk's office.

**b. Application to Proceed Without Prepaying Fees/Costs-Non-Prisoner Cases**

If you are legally indigent and cannot afford to pay the \$400.00 fee, a request to waive the fee can be made by filing, along with the complaint, an Application to Proceed Without Prepaying Fees or Costs (AO239) (available in the clerk's office and on the court's website). The application will be submitted to a magistrate or district judge for approval. The court may require you to file additional documents to support your declaration that you are unable to pay the filing fee. See Local Rule 4.2(a)(1).

If the application is denied by a magistrate judge, you may appeal the ruling to a district judge, or if it was denied by a district judge you may be able to appeal it to the court of appeals; otherwise, the filing fee must be paid. If the application is granted, the filing fee will be waived. You remain responsible, however, for all other costs associated with the litigation unless an application for an additional waiver is made by motion and granted by a judicial officer of this court. See Appendix C, Filing Requirements.

**c. Application to Proceed Without Prepaying Fees/Costs-Prisoner Cases**

Pursuant to federal law, when a prisoner files a civil rights or other civil case, the plaintiff shall be assessed a fee of \$400.00. If unable to pay the fee, the plaintiff must file, along with the complaint, an Application to Proceed Without Prepaying Fees or Costs (AO239), a Certificate of Custodial Institution Form, and a Prisoner Litigation Reform Act Consent Form (all forms available in the clerk's office and on the court's website). Unless the court determines that the complaint presents an emergency requiring immediate court action, no action will be taken on the complaint until all of these forms have been filed.

Once these forms are filed, the application will be submitted to either a magistrate or district judge for consideration. If the judge grants the application, the judge will assess an initial partial filing fee that will be taken from the prisoner's inmate account. Thereafter, prison officials will deduct 20% of each preceding month's income credited to the prisoner's inmate account and will transfer those monies to the Clerk of Court until the filing fee is paid in full. Because the \$50.00 administrative fee does not apply to prisoners granted leave to proceed without prepaying fees or costs, the amount of the filing fee that must be paid is \$350.00.

If the judge denies the prisoner's application, a \$400.00 fee must be paid or an

appeal of the denial of application may be taken to either a district judge, if the decision had been made by a magistrate judge, or the court of appeals.

If the application is granted, the plaintiff is still responsible for all other costs associated with the litigation, unless an application for additional waiver is made by motion and granted by a judicial officer. See Appendix C, Filing Requirements.

The plaintiff is liable for the full filing fee regardless of the outcome of the case. Therefore, once the initial payment toward the filing fee is made, if the complaint is dismissed for any reason prior to collection of the full filing fee, the court will continue to collect money from the prisoner's trust account as ordered until the entire filing fee is paid. If the prisoner is released from custody, the filing fee still must be paid in full. If the initial filing fee is not paid, the action will be dismissed without prejudice and the filing fee will not be collected.

The filing fee for a habeas corpus petition is \$5.00, not \$350 plus the \$50 administrative fee. If an application to proceed without prepayment is granted in a habeas case, the petitioner will not be required to pay any portion of the \$5 fee. If the request is denied, the petitioner must pay the fee in one payment and not in installments.

### **3. Summonses**

All plaintiffs, whether or not they have paid the filing fee or intend to proceed without prepaying fees or costs, must complete and submit a summons form (except for the date and signature line) for each defendant at the same time the complaint is filed. See Local Rule 4.1. Summons forms are available at the clerk's office and on the court's website. See Appendix F, Sample Summons Form.

The plaintiff must provide the most complete known name and address for each defendant. It is the plaintiff's responsibility to determine the identity of all defendants. If any summons form is missing for any defendant, the plaintiff will be directed to fill out a summons form and submit it to the clerk's office, or that defendant may be dismissed from your case.

### **4. What to File in 28 U.S.C. § 2254 Cases (Habeas Corpus Petitions Filed by a Person in State Custody)**

- a. An original and two copies of a Petition for a Writ of Habeas Corpus Form (available in the clerk's office); and
- b. A filing fee in the amount of \$5.00; or

- c. An Application to Proceed Without Prepayment of Fees or Costs (AO239) and a Certificate of Custodial Institution Form (all available in the clerk's office and on the court's website).
  - d. If this is a second or successive § 2254 case, you must also file an order from the Court of Appeals granting your motion to have the district court consider your application. See 28 U.S.C. § 2244.
- 5. What to File in 28 U.S.C. § 2255 Cases (Motions to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody)**
- a. An original and two copies of a Motion to Vacate, Set Aside, or Correct Sentence Form (available in the clerk's office); and
  - b. Although there is no filing fee required for this motion, if the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type are not available, you must submit an Application to Proceed Without Prepayment of Fees or Costs (AO239) and a Certificate of Custodial Institution Form (all available in the clerk's office and on the court's website).
  - c. If this is a second or successive § 2255 motion, you must also file an order from the Court of Appeals granting your motion to have the district court consider your application. See 28 U.S.C. § 2244.
- 6. What to File in Prisoner Civil Rights Cases (42 U.S.C. § 1983)**
- a. An original and two copies of a Complaint Under the Civil Rights Act form, See Appendix E, Instructions & Sample Complaint Form (Person in Custody); and
  - b. A filing fee in the amount of \$400.00; or
  - c. An Application to Proceed Without Prepayment of Fees or Costs (AO239) and a Certificate of Custodial Institution Form (all available in the clerk's office and on the court's website).

## **C. FILING REQUIREMENTS - FORMAT OF FILINGS**

The terms "filings" or "pleadings" refer generally to all documents filed with the court. Filings must be on 8 ½ x 11 inch paper of good quality. All pleadings shall be submitted in the English language unless a translation is provided. Filings should have no less than one inch margins, with page numbers on the bottom center of each page, and be double-spaced. They must be stapled or otherwise attached but shall not be permanently bound. All affidavits must include the title of the document they support or oppose, for example, "Affidavit in Support of Objection to Motion to Dismiss." See Local Rule 5.1.

All motions or other requests for judicial action must be submitted in pleading format and not in letter format. Local Rule 77.6. Although it is preferable that pleadings be typewritten (in a font size no smaller than ten characters per inch or, if a proportionately spaced font is used, no less than twelve point), handwritten documents are acceptable. So the court may fully understand the claims, however, care should be taken with handwritten documents to ensure that they are clear and legible. In the case of prisoners, a pleading will not be rejected for failure to conform to the exact requirements outlined here, but all reasonable efforts should be made to comply with the format required by court rules.

All filings must:

1. Contain the caption of the case, including the name of the court, the parties, and the complete civil action number assigned to the case (once assigned);
2. Contain a title describing the contents of the filing;
3. Identify the party on whose behalf the filings are made;
4. Include the plaintiff's address and telephone number (if any);
5. Contain the original signature of each plaintiff, with the words "*pro se*" following the signature; and
6. Contain a certificate of service (for filings other than the original complaint or petition). Pursuant to Federal Rule of Civil Procedure 5(a), every pleading, correspondence or other document filed after the original complaint, unless it is being filed *ex parte* (without the knowledge or notice to the opposing party), must be served upon each of the parties who have appeared in the case. Each such pleading must contain a certificate of service that states the name and address of the attorney or party served, the manner of service, and the date of service. See Local Rule 5.1. This lets the court know that the other parties have been served with a copy of the same document filed with the court. An example of a certificate of service is:

I certify that a copy of the foregoing (name of the pleading/document)  
was mailed/hand delivered to (name of defendant(s) or counsel for the  
defendant(s)) at (address(es)) on (date).

Original signature, *pro se*

Typed name, address and phone number

## **D. WHERE TO FILE**

The complaint, filing fee or Application to Proceed Without Prepaying Fees or Costs (and any supporting material), should be filed with the clerk's office at the following address:

Office of the Clerk of Court  
United States District Court for the District of New Hampshire  
Warren B. Rudman United States Courthouse  
55 Pleasant Street - Room 110  
Concord, New Hampshire 03301-3941

The documents may be mailed or delivered in person. There is also a 24-hour depository located at the south entrance of the Cleveland Building. If you utilize the 24-hour depository, be sure to stamp the pleading, not just the envelope, with the date/time stamp available at the 24-hour depository. Pleadings left in the 24-hour depository are retrieved once daily, between 7:30 a.m. and 8:00 a.m. No filings or letters should ever be mailed directly to the judge unless a party is specifically ordered to do so.

Upon filing, all civil cases will be assigned at random to one of the judges of this court. Assignments are made randomly so that no party or lawyer may choose the judge to whom the case is assigned.

If the case is initially assigned to a magistrate judge, the parties must complete and file a "Notice of Assignment to United States Magistrate Judge and Consent Form" (available on-line and in the clerk's office) and shall indicate whether all parties consent to the case assignment to a magistrate judge. If the parties do not consent, the case will be reassigned to a district judge. See Local Rule 73.1(b)(2). If the case is initially assigned to a district court judge, the parties can voluntarily agree to reassign the case to a magistrate judge by filing a "Notice, Consent, and Order of Reference Form" (available on-line and in the clerk's office) stating that all the parties consent to the reassignment. See Federal Rule of Civil Procedure 73(b); Local Rule 73.1(b).

# III. SERVICE

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This section will explain:

- How to notify the defendants that a lawsuit has been filed against them
- When notice of the lawsuit should be served on the defendants
- When the court will assist with service

## A. FILING FEE PAID

If a *pro se* plaintiff pays the filing fee at the time the complaint is filed, the clerk's office will sign and seal the summons(es) against the defendant(s) and return the summons(es) to the plaintiff, who must serve a summons on each defendant to the action. The only exception to this rule is if you are incarcerated AND are suing a government official. In that case, you should wait for the judge to complete a preliminary review, after which you will receive an order from the court and should follow the instructions in the order regarding service.

All other *pro se* plaintiffs who have paid the filing fee must serve the summons and complaint on the defendant(s) within 90 days from the date of filing of the complaint, or as otherwise ordered, or the case will be subject to dismissal. **You must comply with Federal Rule of Civil Procedure 4 or the case can be dismissed for failure to effect proper service.**

Summons forms are available at the clerk's office and on the court's website. See Appendix F, Sample Summons Form. If you are not incarcerated and you have paid the filing fee, you may immediately serve the complaint on the defendants.

Rule 4 of the Federal Rules of Civil Procedure requires you to file proof with the court that the complaint has been served on the defendant(s). On the back of the summons is a section referred to as the **return of service** which must be completed by the person who served the summons. The person serving the summons must leave a copy of both the summons form and the complaint with the defendant(s). The return of service must specifically identify the person who served the summons, the name(s) of the person(s) served, and the date(s) and time of service. You must then file the original summons form with the completed return of service with the court.

## B. PRO SE PLAINTIFFS PROCEEDING WITHOUT PREPAYMENT OF FEES OR COSTS

If you are proceeding without prepayment of fees or costs, the court will arrange for service on the defendants. After conducting the preliminary review of a complaint, if the judge finds that the complaint states a claim upon which relief may be granted, the clerk's office will be ordered by the judge to issue summons(es) form(s) against the defendant(s).

The judge will then, pursuant to Federal Rule of Civil Procedure 4(c)(2), appoint a person to make service - usually the Clerk of Court or the United States Marshals Office - who shall be responsible for doing so. In appropriate cases, a judge may order an alternative means of achieving service in accordance with all applicable laws and rules.

### **C. SECTION 2254 PETITIONS AND § 2255 MOTIONS**

After the filing of a petition or motion submitted pursuant to 28 U.S.C. § 2254 or 28 U.S.C. § 2255, the magistrate judge or a district judge will review the pleading to determine whether it sufficiently states a claim entitling the petitioner to relief. If the judge finds that it does, an order will issue directing that the motion or petition be served upon and answered by the respondent(s).

# IV. PROCEEDINGS AFTER SERVICE

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**This section will explain:**

- **What happens after the defendant is served and proof of service is filed**
- **How to ask the court to take a certain action in your case**
- **How to ask the court for permission to add to or change your complaint**
- **How to object to another party's request**
- **What happens during discovery**
- **How you and the court will prepare for trial**

## **A. ANSWER**

### **1. Generally**

A defendant's answer must state any defenses to the complaint and either admit or deny the specific facts contained in the complaint. A defendant may choose to file a motion to dismiss the complaint instead of filing an answer. If a defendant fails to answer or otherwise defend the complaint in a timely fashion, the clerk may enter a default, which means that the plaintiff has prevailed on the claims made in the complaint.

### **2. Answer Deadlines**

If service is made on the defendant(s) by summons, the defendant(s) will have twenty-one (21) days from the date of service of the complaint to file an answer with the court. If the United States or a federal official is a defendant, the answer deadline is sixty (60) days from the date of service.

When the magistrate judge has ordered service of a complaint after conducting a preliminary review pursuant to Local Rule 4.3(d)(1)(B) or 4.3(d)(2), or the magistrate or district judge has ordered an answer to a petition or motion filed pursuant to Rule 4 of the Rules Governing § 2254 Cases or Rule 4 of the Rules Governing § 2255 Cases, the order shall set an answer deadline.

## **B. MOTIONS**

### **1. Generally**

A motion is a type of pleading, filed by any party to a lawsuit, which requests that the court take certain action. Motions are the primary way to ask the court to take some action in a case.

A motion should be made in writing, state the specific reasons for the request made, and state what relief or order is being sought. All motions must contain the word “motion” in the title. You may not combine multiple motions seeking separate and distinct relief into a single motion. Separate motions must be filed.

A motion must also contain a statement either incorporating an attached memorandum of law or a statement explaining why a memorandum is not necessary. If you are arguing a legal matter, you should include citations to supporting authorities, such as rules, statutes (laws), or case law that supports your position. A memorandum filed in support of a nondispositive motion must be less than fifteen (15) pages. A memorandum filed in support of a dispositive motion must be less than twenty-five (25) pages.

Appendix G-1 is a sample motion format that incorporates all the necessary elements of a motion. This format should be used to avoid possible striking (nonconsideration) of a motion because it fails to satisfy the filing requirements. Appendix G-2 is a Motion Form. A fillable PDF version of the Motion Form is also available on the court’s website.

All motions must be signed by the party submitting the motion and must contain a certificate of service indicating the date and manner in which the motion was served on the defendant(s). See Appendix C, Filing Requirements. Service of motions is governed by Federal Rule of Civil Procedure 5.

The district judge or magistrate judge deciding the motion will ordinarily issue a written order without scheduling a hearing on the motion. Hearings are scheduled at the discretion of the court.

Motions will be decided by the judge assigned to the case. Some motions, however, may be referred by a district judge to a magistrate judge for consideration. When a dispositive motion is referred to a magistrate judge for consideration, the magistrate judge will issue a report and recommendation that the motion be either granted or denied and stating the reasons for the recommendation. The report and recommendation is forwarded to the district judge assigned to the case and copies are sent to the parties. **As a party, you have fourteen (14) days to file any objections you have to the report and recommendation.** All objections received within the specified time are forwarded to the district judge. The district judge reviews the report and recommendation and any objections that have been filed and will subsequently issue an order that adopts or rejects, in whole or in part, the magistrate judge’s report and recommendation.

If the motion referred to a magistrate judge is nondispositive, the magistrate judge will issue an order granting or denying the motion, or directing other relief as appropriate. You may file an objection within fourteen (14) days of being served with a copy of the order on a non-dispositive matter.

Motions can delay resolution of your case and divert the party and the court's attention from preparing for trial. For this reason, motions should not be made frivolously or without reason, otherwise, the court may order sanctions against you. Also please note that, if you are represented by an attorney, you may not file pleadings in your case unless the court grants a motion allowing you to file a pro se pleading, you are filing a motion related to the status of your counsel, or an attorney has been granted leave to provide you with limited representation and the filing is outside the scope of the limited representation. See Local Rule 4.3(e).

## **2. Motion to Amend**

If you would like to add to or change your complaint, you must file a motion to amend the complaint. A motion to amend shall: (1) identify any new facts, claims, or parties, (2) explain why any new facts, claims, or parties were not included in the original filing, and (3) include as an attachment your proposed amended complaint. The motion to amend must include a complete amended complaint as it is impermissible to incorporate your original complaint by reference, except with the permission of the court. See Appendix C, Filing Requirements.

## **3. Motion to Dismiss**

A motion to dismiss may be filed for any of the reasons set forth in Federal Rule of Civil Procedure 12(b). The motion to dismiss must state the specific facts and legal arguments supporting the stated reasons for dismissal. Such reasons commonly include the following: the court lacks jurisdiction to decide the subject matter of the case, service of process was not sufficient, or the complaint failed to state a claim that the law recognizes as enforceable.

## **4. Motion for Summary Judgment**

A motion for summary judgment is filed by a party pursuant to Federal Rule of Civil Procedure 56 when there are undisputed facts supporting part or all of the case. The moving party must state the legal reasons they are entitled to succeed on some or all of the issues in the case and state the reasons why they should succeed. If the court finds that there is no genuine disagreement over the facts important to one or more of the issues in the case, those issues may be disposed of by the court's ruling on the motion.

A memorandum must be filed with a summary judgment motion that contains a short and concise statement of material (important) facts and appropriate case law citations. See Local Rule 56.1(a). The material facts you rely on must be supported by evidence, such as affidavits, depositions, answers to discovery requests, or other documents as stated in Federal Rule of Civil Procedure 56. All properly supported material facts in the

motion for summary judgment may be deemed admitted by the adverse party unless that adverse party files an objection, denies the facts in the motion for summary judgment and submits evidence (such as affidavits, depositions, answers to discovery requests, or other documents) that contradicts those facts. See Local Rule 56.1(b); See also Appendix A, Glossary of Terms, “Affidavit.”

In opposing a motion for summary judgment, it usually is not enough for the objecting party to merely deny the facts in the other party’s motion. The responding party must present to the court evidence, such as affidavits, depositions, answers to interrogatories, or documents, which show that the facts are in dispute.

## **5. Motion to Extend**

A motion to extend any deadline shall state whether the extension would result in the continuance of any hearing, conference, or trial, and the motion shall state the proposed extended date. A motion to extend deadlines set in the discovery plan shall include a completed Civil Form 3 of the Local Rules. See LR 7.2(a); see also Appendix C, Filing Requirements.

## **6. Motion for Expedited Ruling**

On rare occasions a true emergency exists such that a party may need the court to take immediate action on a motion. When this occurs, the party filing the motion must note in the title of the caption that they are requesting expedited relief and they must explain within the motion why expedited relief is needed. See LR 7.1(f).

## **7. Motion for Reconsideration**

A motion to reconsider an order of the court (other than a motion governed by Federal Rules of Civil Procedure 59 or 60) must be filed within fourteen (14) days from the date of the order in question.

## **8. Response Time**

To determine the date that a response to a motion is due, refer to Appendix B, Time Computation Chart. See LR 7.2(d).

## **9. Appeal of an Order Entered by the Court While Case is Pending**

Although most orders issued while a case is still ongoing cannot be appealed immediately, there are some exceptions to this general rule. The Federal Rules of Appellate Procedure explain when an order is appealable and you should consult those rules before filing a notice of appeal. If you file a notice of appeal, you will be required to pay a \$505 filing fee with this court unless you are permitted to proceed without prepayment of fees or costs. If you are permitted to proceed without prepayment of fees or costs on appeal, you may still be required to pay certain costs associated with your appeal. Filing a notice of appeal prematurely may delay final resolution of your case and may add unnecessary expense to your case. For more information regarding appeals, see section VII, C of this Guide.

## **C. OBJECTIONS**

Objections to motions, like the motions themselves, must meet certain requirements. To assist you in the preparation of objections, Appendix H is a sample objection format that incorporates all the necessary elements of an objection. This format should be used when preparing objections. See also Appendix C, Filing Requirements.

Like a motion, each objection must have an attached memorandum of law with citations to supporting authorities or must contain a statement explaining why a memorandum is not necessary. A memorandum filed in opposition to a nondispositive motion shall not exceed fifteen (15) pages. A memorandum filed in opposition to a dispositive motion shall not exceed twenty-five (25) pages. See Appendix C, Filing Requirements.

## **D. REPLIES**

A reply memorandum is permitted in response to an objection to a dispositive motion, but not in response to an objection to a nondispositive motion without prior permission of the court. No surreply (i.e. a reply to a reply) memorandum is permitted without prior permission of the court. A party seeking to file a reply or surreply must first file a notice of intent to file a reply or surreply within three (3) days of being served with an objection or reply, respectively. A reply memorandum on a dispositive motion shall not exceed ten (10) pages, while a reply memorandum on a non-dispositive motion and a surreply memorandum may not exceed five (5) pages.

## **E. REDACTION OF PERSONAL IDENTIFIERS**

Federal Rule of Civil Procedure 5.2 and Federal Rule of Criminal Procedure 49.1 require that all parties refrain from including, or shall partially redact where inclusion is necessary, the following personal identifiers from all filings with the court: social security numbers; names of minor children; dates of birth; financial account numbers; and address information in criminal cases.

## **F. DISCOVERY PLAN AND PRELIMINARY PRETRIAL**

After the defendant has either answered the complaint or filed a dispositive motion, in most cases the court will schedule a preliminary pretrial conference. Pursuant to Federal Rule of Civil Procedure 26, at least twenty-one (21) days before the preliminary pretrial conference the parties must confer and develop a proposed discovery plan. Within fourteen (14) days thereafter, the discovery plan must be filed with the court. Habeas corpus petitioners and incarcerated *pro se* parties are exempt from this requirement. Fed. R. Civ. P. 26(a)(1)(B). For more specific information regarding the contents of the discovery plan, see Civil Form 2 of the Local Rules. If the discovery plan is approved, the preliminary pretrial may be cancelled and the parties notified.

At the preliminary pretrial hearing, all parties should be prepared to discuss discovery issues such as expected interrogatories, requests for admission, depositions, use of experts, mediation and/or Alternative Dispute Resolution, a trial date, and other case-related issues as fully explained in Federal Rule of Civil Procedure 16(c). The district judge or magistrate judge will thereafter approve a discovery plan setting forth deadlines. The parties must adhere to those deadlines unless otherwise ordered by the court.

A trial date will be set within the discovery plan and a separate trial notice will be sent out. The notice will include the deadline for filing final pretrial statements as well as the dates for the final pretrial conference and trial.

## **G. DISCOVERY**

### **1. Generally**

Discovery is the process of collecting the evidence necessary to support a claim. Evidence may be gathered from the opposing party, from non-parties or from public records. The parties shall not file discovery materials with the court unless ordered to do so or as appropriate in support of a motion for summary judgment or an objection to a motion for summary judgment. Motions to the court regarding discovery disputes are governed by Federal Rule of Civil Procedure 37 and Local Rule 37.1.

### **2. Initial Disclosures**

For nonincarcerated/non-habeas plaintiffs, Federal Rule of Civil Procedure 26(a) requires the disclosure of certain materials to the adverse party without a discovery request or separate court order. The specific materials and information to be disclosed, as well as the deadlines for disclosure, are contained in the rule and should be carefully reviewed. Failure to comply with discovery rules and orders in a case may result in the dismissal of an action and/or other sanctions.

### **3. Depositions**

A deposition is a procedure in which testimony of any witness, whether or not a party, is taken under oath and recorded before the trial begins. The witness, called the deponent, is examined by the party who asked for the deposition, and then the adverse party may cross-examine. The rules and procedures governing depositions are located at Federal Rules of Civil Procedure 27 through 32.

### **4. Interrogatories**

Up to twenty-five (25) written questions, called interrogatories, may be used to discover information from parties in the action. Permission from the court can be sought to request additional interrogatories. Each interrogatory shall be answered separately and fully, in writing, and under oath. If an interrogatory is objected to, the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable. The answers are to be signed by the person making them and the objections signed by the attorney or *pro se* party making them. The interrogatories shall be answered within thirty (30) days after they are served. Parties are required to supplement their answers to interrogatories as additional information becomes available as provided by Federal Rule of Civil Procedure 26(e)(1). The rules and procedures governing interrogatories are contained in Federal Rule of Civil Procedure 33.

### **5. Production of Documents**

Pursuant to Federal Rule of Civil Procedure 34, a written request to produce records, letters, contracts, or other materials, inspect or copy a document, or permit entry upon designated land or other property in the possession or control of the party upon whom the request is served, may be served on any party. The request shall specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party upon whom the request is served shall serve a written response within thirty (30) days. The response shall state whether the inspection or related activities will be permitted as requested. If the request is objected to, the reasons for the objection shall be stated. The requesting party may seek, by filing a motion to compel, a court order requiring production. A person not a party to the action may be compelled to produce documents or things as provided in Federal Rule of Civil Procedure 45.

### **6. Physical or Mental Examinations**

Pursuant to Federal Rule of Civil Procedure 35, when the mental or physical condition of a party or of a person in the custody or under the legal control of a party is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination. The order may be made only on motion for good cause

shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person by whom it is to be made. A mental or physical examination may be conducted by any “suitably licensed or certified examiner.” Generally, the party seeking such a report will incur the cost for the examination.

## **7. Requests for Admission**

Pursuant to Federal Rule of Civil Procedure 36, a party may serve upon any other party a written request to admit the truth of certain matters within the scope of Federal Rule of Civil Procedure 26(b)(1). The matter is admitted unless, within thirty (30) days after service of the request, the party to whom the request is directed serves upon the requesting party a written answer or objection signed by the party. Failure to answer constitutes an admission. The party who requests the admission may file a motion with the court to determine the sufficiency of the answers or objections. The court may order an answer, amendments to answers given, or even that the matter be deemed admitted.

## **H. FINAL PRETRIAL STATEMENTS**

Federal Rule of Civil Procedure 26(a)(3) and Local Rule 16.2 outline the information that is to be included in, and filings to accompany, a final pretrial statement. This document must be filed thirty (30) days before trial. Objections to final pretrial statements are governed by Local Rule 16.2(d).

## **I. FINAL PRETRIAL CONFERENCE**

The final pretrial conference will be held approximately ten (10) days prior to trial. This conference, held with the trial judge and the parties, will provide an opportunity to discuss the following: issues that will be tried, admissibility of exhibits, pending motions, issues concerning jury selection, witnesses, possibility of settlement, length of trial, and any other relevant issues. The court may enter a final pretrial order outlining issues discussed.

## **J. TRIAL WITNESSES**

No later than twenty-one (21) days before trial, parties authorized to without prepaying fees or costs must file a motion containing the name, address, and a brief statement of the expected testimony of each witness they would like to subpoena for trial. If the stated testimony of a witness is not material or is repetitive, the court may decline to order the issuance of a subpoena for that witness. The court will prepare an order specifying what subpoenas may be issued. Parties proceeding without prepayment should see Local Rule 45.2.

## **K. TRIAL EXHIBITS/EXHIBIT LIST AND FINAL WITNESS LIST**

Trial exhibits, an exhibit list, and a final witness list are to be filed in the clerk's office seven (7) days before trial begins. See LR 83.14. Detailed instructions for the marking of exhibits are available from the clerk's office or on the court's website.

## **L. JUROR QUESTIONNAIRES**

The clerk's office will maintain and make available a complete listing of jurors who will be in attendance the day of jury selection as well as a questionnaire for each juror. The questionnaire is a document provided by the clerk's office, and completed by each juror, that asks for certain personal information. Five (5) working days prior to the first jury selection date of each trial period, the list and questionnaires will be made available only to attorneys, their agents, and pro se parties actually involved in cases scheduled for trial during that period. The questionnaires may not be photocopied or removed from the clerk's office and the information in the questionnaires may not be disclosed. Absent leave of the court, after the trial or an appeal, if one is taken, all information taken from the questionnaires must be destroyed as required by Local Rule 47.1.

# V. TRIAL

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**This section will explain:**

- **How a jury is selected**
- **How you present your evidence**
- **How a decision is reached**

A trial is the examination of evidence and applicable law by a judge or a jury who then decide what facts to accept, apply the law to those facts, and determine the result in the case. At a trial, the plaintiff attempts to prove the claims in support of the relief requested, and the opposing party attempts to prove the opposite. Each party will have the opportunity to present their side of the case. At the conclusion of the evidence, if the case was tried before a jury, the jury will render its verdict. If there was no jury and a bench trial was held, the judge will render a decision. Often, a decision rendered by a judge will be issued at a future date in the form of a written order. Of course, at any time before trial, if the matter is disposed of by motion, settlement, or otherwise, no trial will be necessary. Local Rule 39.1 sets forth guidelines for the length and limits of trial, conduct of counsel/*pro se* litigants in the courtroom, and many of the topics discussed below.

## A. JURY SELECTION

A jury trial begins with the judge giving a brief outline of what the case is about, reading witness lists, introducing counsel and the parties, and conducting the voir dire (a preliminary examination concerning the eligibility of a prospective juror to serve on the jury). The courtroom clerk will then randomly select jurors. After each selection, the judge will ask the juror if there are any concerns with or responses to any of the questions asked. If so, the judge will question the juror individually at the bench in the presence of counsel and any *pro se* party. After the court has completed its examination, challenges to a prospective juror for cause may be made at the bench. A challenge for cause may be allowed if the prospective juror lacks a qualification required by law or cannot be fair and impartial in deciding the case. This process will continue until the appropriate number of jurors has been selected for the panel.

The parties will then exercise their peremptory challenges (limited to three per side) at the clerk's bench out of the hearing of prospective jurors. Peremptory challenges are requests by a party that a certain prospective juror not sit on the panel and, unlike challenges for cause, no reason need be stated to support the challenge. Jurors who are the subject of a peremptory challenge shall be excused. The remaining jurors shall comprise the trial panel, will hear the evidence, and will render their verdict at the conclusion of the case. The court will seat a jury of not fewer than six persons and all jurors participate in the verdict.

## **B. VIEW AND PRE-VIEW STATEMENTS**

A view to a location relevant to the case may be taken if the judge finds that such a view will be helpful to the judge or jury in understanding the evidence presented. If a party wants to have a view in the case, that party must specially request it in the final pretrial statement. The court will determine at the final pretrial conference whether a view will be allowed. If a view is permitted in a jury trial, each party will have the opportunity to make brief, nonargumentative statements to the jury to alert them to particular points of interest they may see at the view.

## **C. OPENING STATEMENTS**

The purpose of an opening statement is to describe the issues in the case and the facts a party intends to prove in support of the claims made or defenses raised. The plaintiff's statement is presented first, because the plaintiff has the burden of proving the facts supporting the allegations and that the defendant was responsible for the injury or damage alleged. Opening statements shall be nonargumentative and no longer than thirty (30) minutes unless otherwise ordered.

## **D. PRESENTATION OF EVIDENCE**

The actual presentation of evidence occurs after the opening statements have been completed and consists of witness testimony and exhibits.

### **1. Witness Testimony**

Not all witness testimony is admissible in a trial. It is important that the *pro se* party be very familiar with those portions of the Federal Rules of Evidence which relate to the admissibility of witness testimony prior to attempting to introduce such evidence at trial.

#### **a. Direct Examination**

When an attorney or *pro se* party calls a person to the witness stand and asks questions, it is called direct examination. The plaintiff is first in presenting witnesses.

#### **b. Cross-Examination**

When the other side attempts to discredit the testimony given by a witness after the direct examination, it is called cross-examination.

### **c. Redirect Examination**

The initial examiner may elect to re-question the witness on the points covered by the cross-examination. This is called redirect examination.

## **2. Exhibits**

Exhibits properly presented to the court and admitted into evidence will be considered by the judge or jury deciding the case. Because the admission of exhibits is determined by the judge, it is important for a *pro se* party to comply with the Federal Rules of Evidence concerning the proper admission of exhibits.

## **3. Objections**

In order to preserve an argument for appeal, you must give the judge an opportunity to consider your argument when the basis for it first arises. If you believe that testimony or evidence the other party is trying to admit should not be allowed based on the Federal Rules of Evidence, you must raise your objection to the testimony or evidence with the judge before the testimony is given or the evidence is introduced. If you do not do so, you may later be deemed to have waived your opportunity to challenge the admission of the testimony or evidence.

## **E. CLOSING ARGUMENTS**

The purpose of the closing argument is to allow each side to summarize the evidence presented, to explain how the evidence is relevant to the issues in the case, and to tell the jury for whom they should return a verdict based on all the evidence they have heard at trial. The closing argument can reiterate crucial testimony that was presented and can highlight why the plaintiff's or defendant's version of the event should or should not be believed. In a closing argument, a party is not permitted to include personal opinions about the facts or the evidence and must be certain not to inadvertently do so. The parties must make their arguments based on facts actually presented in evidence during the trial and reasonable conclusions that can be drawn from those facts. The defendant shall deliver the first closing argument. The plaintiff argues last.

## **F. CHARGE TO THE JURY, DELIBERATIONS, AND VERDICT**

After each side has had the opportunity to present testimony and evidence, the judge delivers legal instructions, or a charge, to the jury. The charge explains the law that the jury should apply to decide the case. The parties will have an opportunity to discuss the jury instructions with the judge prior to the charge. After the charge is delivered, the jury will then go to a secure room to conduct its deliberations. Once the jury has reached a verdict, the court will be notified. If a jury is unable to reach a verdict, the judge will declare a mistrial and the case must then be tried again before a new jury.

# VI. PROCEEDINGS AFTER TRIAL

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This section will explain:

- What a “Bill of Costs” is
- Who is entitled to an award of costs
- How to file an appeal

## A. JUDGMENT

Once all issues in the case have been disposed of, a document entitled “Judgment” shall be entered by the clerk’s office and the case will be closed.

## B. BILL OF COSTS

The party that ultimately wins a lawsuit may be awarded certain costs of litigation. These costs are assessed by the court and must be paid by the losing party. If the plaintiff wins the case, a Bill of Costs may be filed against the defendant(s). If the plaintiff loses, however, the defendant(s) may file a Bill of Costs against the plaintiff. These costs, which are explained more fully at 28 U.S.C. § 1920, include expenses such as deposition costs, money for printing, witness fees, and costs incurred for summonses and subpoenas. Even if the plaintiff was granted leave to file without prepayment of fees or costs, the plaintiff may have to pay for the defendant’s costs if the defendant prevails.

If you win your case, a Bill of Costs form (available in the clerk’s office and on the court’s webpage) must be filed with the clerk **within twenty-one (21) days** after the time for appeal has expired. A copy must be served on the opposing attorney or *pro se* party. The Bill of Costs must be supported by a memorandum of law and must be verified by oath stating that the items are correct, the costs claimed are allowable by law, the services have been actually and necessarily performed, and the disbursements have been necessarily incurred in the action or proceeding. An itemization of all costs shall be attached to the Bill of Costs.

If you lose your case, and the other party files a Bill of Costs, **your objection to the Bill of Costs is due within fourteen (14) days after service.** The Clerk of Court will review these submissions and will issue a taxation of costs. The Clerk’s taxation shall be final unless modified on review by a judge on a motion filed within seven (7) days after it is issued. The rules and procedures related to Bills of Costs are more fully set forth at 28 U.S.C. § 1920, Federal Rule of Civil Procedure 54, and Local Rule 54.1.

## C. APPEAL

If you intend to appeal the decision or verdict of the judge or jury, you should closely review the Federal Rules of Appellate Procedure. These rules are available for review at the clerk's office, at most public libraries, at the libraries of most state and federal correctional institutions located in New Hampshire, and online on the website for the United States Court of Appeals for the First Circuit at [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov).

If a party believes a jury verdict or decision rendered by the court was incorrect, the appeal from this court usually lies with the United States Court of Appeals for the First Circuit in Boston, Massachusetts. An appeal of a decision is initiated by filing a Notice of Appeal in this court. See Appendix I, Sample Notice of Appeal. A Notice of Appeal should contain a description of the party or parties taking the appeal, a description of the judgment or order or the part of the order or judgment appealed from, and the name of the court to which the appeal is taken. If more than one party wishes to appeal the decision or verdict, each party must file a separate notice of appeal.

The fee for filing a Notice of Appeal is \$505.00 unless the person taking the appeal has been granted leave proceed without prepayment of fees or costs. Unless the district court certifies that the appeal was not taken in good faith, a non-incarcerated party who has previously been granted leave to proceed without prepayment in the case need not file a new application to proceed without prepayment of fees or costs on appeal. Fed. R. App. P. 24(a)(3). Conversely, an incarcerated party seeking to appeal *in forma pauperis* must file a new motion requesting permission to do so regardless of whether the litigant was previously granted leave to proceed without prepayment by the district court. 28 U.S.C. § 1915(b)(1); Fed. R. App. P. 24(a)(3)(B).

Unless the United States or an officer or agency of the United States is a party to the action, the **Notice of Appeal in a civil case must be filed within thirty (30) days from the date of entry of the judgment that is being appealed.** If the United States or an officer or agency of the United States is a party to the action, the Notice of Appeal must be filed within sixty (60) days from the date of entry of the judgment. The “date of entry” is the day the judgment was entered onto the district court's docket. The date an order or opinion is signed is not necessarily the same day that it will be reduced to a judgment or entered onto the court's docket. The parties should consult Federal Rule of Civil Procedure 58 to determine the date judgment is deemed to be entered in their case.

The appellate court will only consider issues the district court has considered, so it is important to make your argument on an issue to the district court prior to appealing the issue. Upon receipt of the Notice of Appeal, the appellate court will notify the parties of any orders issued or schedules set in the case.

## **APPENDIX A, GLOSSARY OF TERMS**

<b>ADMISSIBLE</b>	Evidence that can be legally and properly introduced in a civil or criminal trial or other hearing before the Court.
<b>AFFIDAVIT</b>	A voluntary written or printed declaration of facts, confirmed by oath of the party making it before a person with authority to administer the oath.
<b>ALTERNATIVE DISPUTE RESOLUTION (ADR)</b>	Settling a dispute without a full, formal trial. Methods include mediation, arbitration, and settlement, among others.
<b>ANSWER</b>	A document filed by a defendant in response to the complaint.
<b>ANSWERS TO INTERROGATORIES</b>	A formal written statement by a party to a lawsuit which answers each question or interrogatory asked by the other party. These answers must be acknowledged before a notary public or other person authorized to take acknowledgments.
<b>APPEAL</b>	A proceeding brought to a higher court to review a lower court decision.
<b>BENCH TRIAL</b>	A trial without a jury in which a judge decides the facts.
<b>CAPTION</b>	The heading or introductory part of a pleading.
<b>CAUSE OF ACTION</b>	The fact or facts which give a person a right to relief in court.
<b>CERTIFICATE OF SERVICE</b>	A statement that a copy of the filed document was delivered to the other parties or their counsel including the date and manner of delivery. A certificate of service is required for every pleading subsequent to the original complaint. The certificate must be signed by the person delivering the document.
<b>CHALLENGE FOR CAUSE</b>	A request from a party to a judge that a certain prospective juror not be allowed to be a member of a jury because of specified causes or reasons.
<b>CHAMBERS</b>	A judge's private office.

<b>CHARGE TO THE JURY CIRCUMSTANTIAL EVIDENCE</b>	The judge's instructions to the jury concerning the law that applies to the facts of the case the jury is to decide. All evidence that is not direct evidence. Circumstantial evidence is evidence that does not explicitly place facts in evidence, but provides information to the fact finder from which an inference or inferences can be drawn.
<b>CLOSING ARGUMENT</b>	The statement made to the finder of fact, by counsel or <i>pro se</i> party, made after all parties have concluded their presentation of evidence in a trial.
<b>COMPLAINT</b>	The legal document that a plaintiff files with the Clerk of Court to initiate a lawsuit. It contains a statement of the claim(s) of the plaintiff, including the legal and factual grounds for relief, and identifies each defendant.
<b>COUNSEL</b>	An attorney at law hired or appointed to assist his or her client with advice and pleads for him/her orally and in writing before the court.
<b>COUNTERCLAIM</b>	A claim made by the defendant in a civil lawsuit against the plaintiff. In essence, a counter lawsuit within a lawsuit.
<b>COURT COSTS</b>	The expenses of prosecuting or defending a lawsuit, other than the attorney's fees. Money may be awarded to the successful party (and may be recoverable from the losing party) as reimbursement for court costs.
<b>CROSS CLAIM</b>	A pleading which asserts a claim arising out of the same subject matter as the original complaint against a co-party; that is, one co-defendant cross claims against another co-defendant for contribution for any damages assessed against him.
<b>DAMAGES</b>	Money awarded by a court to a person injured by the unlawful act or negligence of another person.
<b>DEFAULT</b>	Failure of the defendant to appear and answer the summons and complaint.
<b>DEFENDANT</b>	The party that is being sued.
<b>DEPOSITION</b>	Testimony of a witness or a party taken under oath outside the courtroom.
<b>DIRECT EVIDENCE</b>	Testimony or other information offered by a witness who saw acts

done, heard words spoken, or otherwise possess actual knowledge of a fact directly bearing on the case in controversy.

<b>DIRECTED VERDICT</b>	In a case in which the plaintiff has failed to present on the facts of the case proper evidence for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it.
<b>DISCOVERY</b>	The term refers to the information relevant to the case which is exchanged between the parties. Rules 26 through 37 of the Federal Rules of Civil Procedure govern discovery in a civil case.
<b>DISPOSITIVE MOTION</b>	A motion which, if granted, would dispose of a certain portion (a claim, for example) of a case or the whole case, such as a motion to dismiss or motion for summary judgment.
<b>EVIDENCE</b>	Information presented in testimony or in documents that is used to persuade the judge or jury serving as the fact finder to decide the case for one side or the other.
<b>EX PARTE</b>	Something requested or done on behalf of or at the request of one party only, without notice to the opposing party.
<b>HUNG JURY</b>	A jury whose members cannot agree upon a verdict.
<b>IN FORMA PAUPERIS</b>	The status of a person allowed to proceed before the court despite being able to pay the costs of filing a complaint or other costs associated with a lawsuit.
<b>INADMISSIBLE</b>	That which, under the rules of evidence, cannot be admitted or received as evidence at trial.
<b>INDIGENT</b>	Needy or impoverished. A defendant who can demonstrate indigence to the court may qualify for the waiver of some or all of the filing fee and other costs of litigation.
<b>INTERROGATORIES</b>	A set or series of written questions propounded to a party, witness, or other person having information or interest in a case; a discovery device.
<b>JUDGMENT</b>	The official and authentic decision of a court adjudicating with finality the respective rights and claims of the parties to a suit. Also, a document summarizing all of the actions or proceedings which disposed of certain or all claims in a case.

<b>JURISDICTION</b>	The power or authority of a court to hear and try a case; the geographic area in which a court has power or the types of cases it has power to hear.
<b>JURY</b>	A panel of people selected according to law and sworn to try a question of fact in the court.
<b>LAW</b>	The combination of rules and principles of conduct promulgated by legislative authority, derived from court decisions and established by local custom.
<b>LITIGANT</b>	A party to a lawsuit.
<b>MEDIATION</b>	A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them agree on a settlement.
<b>MISTRIAL</b>	An invalid trial, caused by fundamental error.
<b>MOTION</b>	A request made to the court by any party for the purpose of obtaining a ruling or order directing some act to be done.
<b>MOTION <i>IN LIMINE</i></b>	A motion requesting that information which might be prejudicial or otherwise inappropriate to be received in evidence not be allowed to be heard in a case, or requesting special treatment for such information.
<b>OATH</b>	A solemn pledge made under a sense of responsibility in attestation of the truth of a statement or in verification of a statement made.
<b>OBJECTION</b>	The exception taken to some motion, statement or procedure. An objection is ruled upon by a judge.
<b>OPENING STATEMENT</b>	The initial statement made by each party in a trial outlining the facts each expects the evidence to establish during the trial.
<b>ORDER</b>	A directive issued by a judicial officer or clerk clarifying or establishing the status of an issue before the Court or instructing the plaintiff or defendant to do something, or granting or denying a motion.
<b>PEREMPTORY CHALLENGE</b>	Request by a party, not supported by reason or cause, that a certain prospective juror not be allowed to sit as a member of the jury.

<b>PERJURY</b>	The criminal offense of making a false statement under oath.
<b>PLAINTIFF</b>	A person who is filing a civil complaint.
<b>POLLING THE JURY</b>	The act, after a jury verdict has been announced, of asking jurors individually whether they agree with the verdict.
<b>PREPONDERANCE OF THE EVIDENCE</b>	Greater weight of the evidence, the common standard of proof in civil cases.
<b><i>PRO SE</i></b>	The status of a party to a lawsuit who is not represented by counsel and who is representing themselves in court.
<b>PUNITIVE DAMAGES</b>	Money award given to punish the defendant or wrongdoer.
<b>REMAND</b>	To send a dispute back to the court where it was originally heard.
<b>REMOVAL</b>	The transfer of a state case to federal court for trial.
<b>REQUEST FOR ADMISSION</b>	Written statements of facts concerning a case that are submitted to an adverse party which must be admitted or denied; a discovery device.
<b>REQUEST FOR PRODUCTION OF DOCUMENTS</b>	A direction or command served upon another party for production of specified documents for review with respect to a suit; a discovery device.
<b>SEQUESTRATION OF WITNESSES</b>	An order keeping all witnesses (except plaintiff and defendant) out of the courtroom except for their time on the stand and cautioning them not to discuss their testimony with other witnesses.
<b>SETTLEMENT</b>	An agreement between the parties which disposes of a lawsuit.
<b>SIDEBAR</b>	A conference between the judge and parties, usually in the courtroom, out of the hearing of the jury and spectators.
<b>STATUTE OF LIMITATIONS</b>	A law that limits the right of a plaintiff to file an action to a specified time period after the occurrence during which the injured party has the right to sue.

<b>STIPULATION</b>	An agreement between the parties involved in a suit regulating matters incidental to trial.
<b>SUMMARY JUDGMENT</b>	A judgment given without a trial on an issue in a case or on an entire case on the basis of facts not in dispute, as outlined by pleadings, affidavits, and exhibits presented for the record entitling one party to judgment as a matter of law.
<b>SUMMONS</b>	A directive of the court, directed to the defendant, which informs the defendant that an action has been filed against him/her and an answer is required.
<b>TESTIMONY</b>	The evidence given by a witness under oath. It does not include evidence from documents and other physical evidence.
<b>THIRD-PARTY COMPLAINT</b>	A petition filed by a defendant against a third party (not already a party to the suit) which alleges that the third party is liable for all or part of the damages plaintiff seeks or may win from defendant.
<b>TRANSCRIPT</b>	A written, word-for-word record of what was said. Usually refers to a record of a trial, hearing, deposition, or other proceeding that has been transcribed from a recording or stenographic notes.
<b>TRIAL</b>	An adversarial examination of issues between parties to an action.
<b>UNITED STATES COURT OF APPEALS</b>	Courts that hear appeals from federal district courts, bankruptcy courts, and tax courts.
<b>UNITED STATES MAGISTRATE JUDGE</b>	Given authority by 28 U.S.C. § 636, the Magistrate Judge hears all preliminary criminal matters, but does not conduct felony trials, and hears any pretrial civil matters referred by the district court. If all parties consent, criminal misdemeanor and civil trials can be heard by the Magistrate Judge.
<b>VERDICT</b>	A conclusion, as to fact or law, that forms the basis for the court's judgment.
<b>VOIR DIRE</b>	The preliminary examination made in court of a witness or juror to determine qualifications or interest in a matter.
<b>WITH PREJUDICE</b>	A declaration which dismisses all rights. A judgment barring the right to bring or maintain an action on the same claim or cause.

**WITHOUT  
PREJUDICE**

A declaration that no rights or privileges of the party concerned are waived or lost. In a dismissal these words maintain the right to bring a subsequent suit on the same claim.

**WRIT OF  
EXECUTION**

An order of the court showing debt of one party to another and commanding the court officer to take property in satisfaction of the debt.

## APPENDIX B, TIME COMPUTATION

12/1/2009

### UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

#### TIME COMPUTATION

#### REFERENCE RULES

Fed. R. Civ. P. 5(b)  
Fed. R. Civ. P. 6(a) and (d)  
LR 6.1 and 7.1(b)

Fed. R. Crim. P. 45(a) & (c)  
Fed. R. Crim. P. 49  
LCrR 12.1(d) and 45.1

#### GENERAL INFORMATION

<b>TIME PERIODS STATED IN DAYS OR LONGER</b>	Exclude first day and count every calendar day, including intermediate Saturdays, Sundays, and legal holidays. Include the last day, unless it is a Saturday, Sunday, or a legal holiday, or a day when the Clerk's Office is inaccessible.
<b>TIME PERIODS STATED IN HOURS</b>	Begin counting immediately on the occurrence of the event that triggers the period and count every hour, including intermediate Saturdays, Sundays, and legal holidays. If the period would end on a Saturday, Sunday, or a legal holiday, the period continues to run to the next business day.
<b>ADDITIONAL TIME AFTER SERVICE BY MAIL, SERVICE ELECTRONICALLY THROUGH CM/ECF, LEAVING WITH CLERK, AND OTHER MEANS TO WHICH PARTY CONSENTS IN WRITING</b>	If time period runs from the date of "service" rather than "filing," add three (3) calendar days after compute the end of the prescribed period under Rule 6(a).
<b>WHEN SERVICE IS COMPLETE</b>	Service by mail is complete when mailed. Service by electronic means (including through ECF) is complete on transmission. Service by other means is

**APPENDIX C, FILING REQUIREMENTS**

**U.S. DISTRICT COURT**

**MOTION/OBJECTIONS/MEMORANDUM/AFFIDAVITS**

**FILING REQUIREMENTS**

12/1/13

<b><i>MOTION FILING REQUIREMENTS - BY GROUP</i></b>
<b>*** ALL MOTIONS ***</b>
Shall be considered only if submitted in separate filing with the word "motion" in the title. LR 7.1(a)(1)
Shall not seek separate and distinct relief in one single motion filing. LR 7.1(a)(1)
Shall contain a certificate of service that states the name and address of the attorney or party served, the manner of service, and the date of service. LR 5.1(d)
Motion which requires consideration of facts not in the record shall be accompanied by affidavits. LR 7.1(a)(2)
Shall have memorandum with citations or a statement explaining why a memorandum is unnecessary. Shall be filed as attachments to the motion and not as separate filings. AP 2.3 & LR 7.1(a)(2)
If oral argument is requested, a written statement should be included outlining reasons why such argument may provide assistance to the court. LR 7.1(d)
If expedited review is requested, must show good cause why expedited relief is needed and note that expedited relief is sought in the motion caption. LR 7.1(f)
If filing a motion to seal, must explain the basis for sealing, specify the proposed duration of the sealing order, and designate whether the material is sealed at Level I or Level II. AP 3.3. & LR 83.12 (f)
<b>*** AND IF IT IS A NONDISPOSITIVE MOTION ***</b>
Certification must be included stating good faith attempt to obtain concurrence (all parties). LR 7.1(c) If concurrence has been obtained, motion shall contain "assented to" in title. LR 7.1(c)
<b>*** AND IF IT IS A MOTION TO/FOR ***</b>
Admission Pro Hac Vice. Must be accompanied by a \$100 admission fee and an affidavit (per attorney). Affidavit filed as an attachment. Only one request for attorney admission per motion. AP 3.7 & LR 83.2(b)
Amend. Must have the original proposed amendment attached. Amendment shall reproduce the entire filing as amended. Motion/memo must contain two required elements as listed. AP 2.5 & LR 15.1
Class Action Settlement. Must have proposed notice order, samples of proposed notices, and proposed order attached. LR 23.1
Compel/for Protective Order. Must be in the format outlined or have attached a copy of the discovery document (only that portion which is objected to or is the subject of the motion). LR 37.1
Consolidate. Must list each case in the caption. LR 42.1(d)
Continue Trial. Civil. Shall contain a certification that the party on behalf of whom the motion was filed has been notified of the request. LR 7.2(c) Criminal. Must be accompanied by waiver of speedy trial signed by the defendant, which is LCrR 12.1(d) filed

conventionally. AP 3.1(e)
Default Judgment. Shall contain statement of mailing to last known address of the defaulted party and, if known, to the attorney thought to represent that party. LR 55.1(b)
<b>* * * IF IT IS A MOTION TO/FOR (CONTINUED) * * *</b>
Departure. Must contain certain elements; copy to Probation. LCrR 32.1(i)
Discovery/Criminal. No motion seeking routine discovery shall be filed unless the opposing party has failed to comply with a written request for the discovery sought. LCrR 16.3
Excess Fees/Criminal. If claim exceeds statutory limit, motion must be filed requesting approval of excess and outlining the reasons why such excess is justified. LCrR 44.1(c)
Extend Time. Shall state if the requested extension would result in the continuance of any hearing, conference, or trial, and state the proposed extended date. 7.2(a) If the requested extension is for a date in the discovery plan, must also state whether it would result in the need to extend other discovery deadlines, propose dates for those deadlines, and be accompanied by Civil Form 3. 7.2.(a)
Minor's Settlement. Must be signed by minor's parent, next friend, or guardian. Must contain information required by NH Superior Court Civil Rule 40; more if minor is out-of-state resident. LR 17.1
Proceed In Forma Pauperis. Shall be accompanied by financial affidavit. If institutionalized, shall also submit a trust account statement. LR 4.2
Registry Funds. Proposed order required for investment; separate filing for withdrawal. LR 67.2(b), 67.3
Sentencing. Copies of sentencing motions shall be provided to all parties and the probation office. LCrR 32.1(a)
Temporary Restraining Order, Preliminary Injunction. Shall be accompanied by a proposed order. LR 65.1
Vacate Fine. Will not be considered after the fine is paid. LR 1.3
Withdraw Appearance. Civil. Required if certain conditions exist. Must include client's last known address. LR 83.6(d) Criminal. Must obtain leave of court to withdraw appearance. LCrR 44.3

### ***OBJECTION - FILING REQUIREMENTS***

Objection which requires consideration of facts not in the record shall be accompanied by affidavit(s). LR 7.1(a)(2)
Shall have memorandum with citations or a statement explaining why a memorandum is unnecessary. LR 7.1(a)(2)
If oral argument is requested, a written statement should be included outlining reasons why such argument may provide assistance to the court. LR 7.1(d)

### ***MEMORANDUM - FILING REQUIREMENTS***

Memorandum shall not exceed stated page limitations (15 pages nondispositive; 25 pages dispositive). LR 7.1(a)(3)
Reply or Surreply Memorandum. Page and time limits. LR 7.1(e)
If supporting/opposing Summary Judgment, shall incorporate short and concise statement of material facts, supported by appropriate record citations. LR 56.1(b)(1) & (2)
If supporting motion to amend, memorandum or motion must contain two required elements. LR 15.1(a)

<b><i>AFFIDAVIT - FILING REQUIREMENTS</i></b>
<b>Affidavits must identify the filing they oppose/support by indicating the filing's title. LR 5.1(f)</b>
<b>Affidavits shall be included as exhibits in appendix or attachment. AP 2.5 &amp; LR 5.1(a)(2)</b>
<b>Objection which requires consideration of facts not in the record shall be accompanied by affidavit(s). LR 7.1(a)(2)</b>

## APPENDIX D, SAMPLE COMPLAINT FORMAT

### UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

\_\_\_\_\_  
Name of Plaintiff(s)

vs.

CIVIL ACTION NO.  
(Clerk's Office to Complete)

\_\_\_\_\_  
Name of Defendant(s)

#### COMPLAINT

(Indicate if Jury Demand is Requested)

1. Paragraph - Name and Address of Plaintiff. Add additional separately numbered paragraphs, one for each plaintiff, if there is more than one plaintiff.
2. Paragraph - Name and Address of Defendant. Add additional separately numbered paragraphs, one for each defendant, if there is more than one defendant.
3. Paragraph - One numbered paragraph containing the allegation of jurisdiction, that is, under what legal authority the case is filed in this court rather than in another court.
4. Paragraph - Allegation(s)/claim(s) against the defendant(s). Write one separate, numbered paragraph for each allegation/claim.

The final closing paragraph should contain a statement of the relief being sought: that is, what the plaintiff wants the court to do to correct the situation. (This paragraph should not be numbered.) If different types of relief (for example, money damages, reinstatement to a job, an order directing the defendant to do or stop doing something, etc.) are sought, they should be in separate paragraphs, preceded by capital letters A., B., C., etc.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

(Typed or Printed)

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No. \_\_\_\_\_

## **APPENDIX E-1, USDCNH-102, COMPLAINT FORM**

### **UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE**

Plaintiff(s)

### **COMPLAINT**

Defendant(s)

### **Parties to this Complaint:**

Plaintiff(s)'s Name, Address, and Phone Number

Defendant(s)'s Name, Address, and Phone Number

**Jurisdiction and Venue:**

(Explain why your case is being filed in federal court and why the court is legally permitted to hear your case. Add additional sheets as necessary.)

**Statement of Claim:**

(As briefly as possible, state each claim you have against defendant(s) and state the legal cause of action, facts, and circumstances that gave rise to your claim(s). Add additional sheets as necessary.)

**Relief Requested from the Court:**

(State briefly exactly what you want the court to do for you. Add additional sheets as necessary.)

**Jury Demand:**

- ☐ Check this box if you are requesting a jury trial (if you want a jury of your peers to decide your case).
- ☐ Check this box you are NOT requesting a jury trial (if you want the assigned judge to decide your case).

---

Date

---

Signature of Plaintiff

## **APPENDIX E-2, USDC-11, INSTRUCTIONS & COMPLAINT FORM FOR A PERSON IN CUSTODY**

### **Instructions for Filing a Complaint by a Prisoner Under the Civil Rights Act, 42 U.S.C. § 1983**

#### **I. 42 U.S.C. § 1983**

You may file an action under 42 U.S.C. § 1983 to challenge federal constitutional or statutory violations by state actors. Lawsuits challenging the conditions of your confinement are generally filed under this statute. A § 1983 action may not be used to challenge the length of your sentence or the validity of your conviction.

#### **II. Filing a § 1983 Action**

To file a § 1983 action, you must submit: (1) an original complaint and (2) a fee of \$400.00 (\$350.00 filing fee and \$50.00 administrative fee) (by money order or cashier's check made payable to "Clerk, U.S. District Court") or an original Application to Proceed Without Prepayment of Fees or Costs (AO239).

This packet includes a complaint form and an Application to Proceed Without Prepayment of Fees or Costs. When these forms are fully completed, mail the originals to: Office of the Clerk of Court, United States District Court for the District of New Hampshire, Warren B. Rudman United States Courthouse, 55 Pleasant Street, Room 110, Concord, NH 03301-3941. If granted, the \$50.00 administrative fee is waived.

#### **III. Filing Fees**

The fee for each Plaintiff in a § 1983 action is \$400.00 (\$350.00 filing fee and \$50.00 administrative fee), to be paid at the time of filing. If you are unable to pay the full filing fee at this time, you may apply to proceed without prepayment of fees or costs, using the Application in this packet. If you are granted leave to proceed without prepayment, the \$50.00 administrative fee is waived, but you must still pay the statutory filing fee of \$350.00 in several installments. 28 U.S.C. § 1915. You must fully complete the application and sign and declare under penalty of perjury that the facts stated therein are true and correct.

If the complaint contains more than one inmate plaintiff, each plaintiff must submit a separate Application or filing fee. Inmate plaintiffs must use the Application provided with this packet and not any other version.

#### IV. Complaint Form

The Complaint must be typewritten or legibly handwritten and you must sign and declare under penalty of perjury that the facts stated in the complaint are true and correct. Each plaintiff must sign the complaint.

#### V. Pro Se Litigation - Individual and Class Action Lawsuits

As a *pro se* party, you are representing only yourself and presenting only your claims and defenses. Under the law, you cannot speak for another person, or other entity. You may not represent a class of people in a class action lawsuit. See Local Rule 83.2(d) & 83.6(b). A *pro se* party may not authorize another person who is not a member of the bar of this court to appear on his or her behalf. Each *pro se* party must sign the complaint and all additional pleadings filed with the court on his or her behalf.

In order to assist *pro se* parties, the Court has compiled the Pro Se Guide, which should be available in the libraries of all New Hampshire correctional facilities. If your facility does not have a copy, the Court will mail you a copy upon request.

#### VI. Exhaustion of Administrative Remedies

Under 42 U.S.C. § 1997e, you are required to exhaust your administrative remedies before filing a § 1983 action regarding conditions of confinement and other issues relating to prison life. Failure to completely exhaust administrative prison grievance procedures prior to filing your complaint will result in the dismissal of your suit in its entirety.

#### VII. Change of Address After Complaint is Filed

You will be notified as soon as the court issues any order in your case. It is your responsibility to keep the court informed of any changes of address to ensure you receive court orders. Failure to so do may result in dismissal of your action.

#### VIII. Copying Requests

Please note that the Office of the Clerk of Court charges fifty cents (.50¢) per page for all copy requests. Thus, we recommend that you keep copies of all documents submitted to the court for your own records.

United States District Court  
District of New Hampshire

\_\_\_\_\_  
Plaintiff

Civil Action No. \_\_\_\_\_  
(To be provided by Clerk's Office)

\_\_\_\_\_  
Defendant(s)

**TO BE COMPLETED BY PLAINTIFF**  
(Check One Only)  
( ) DEMAND FOR JURY TRIAL  
( ) NO JURY TRIAL DEMAND

***COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C §1983***

I. Parties

A. Please provide the following information for each plaintiff:

1. Name \_\_\_\_\_  
(Last) (First) (Initial)

2. Place of Detention \_\_\_\_\_

3. Institutional Address \_\_\_\_\_  
\_\_\_\_\_

4. Are you incarcerated pursuant to a pretrial detention order or are you a sentenced inmate?

- ☐ Pretrial Detention Order  
☐ Sentenced Inmate

5. Date pretrial detention order was issued or sentence imposed \_\_\_\_\_

B. Please provide the full name, current title and address known for each defendant:

1. Name \_\_\_\_\_  
(Last) (First) (Initial)

2. Title \_\_\_\_\_

3. Address \_\_\_\_\_

\_\_\_\_\_  
(If the complaint is being made against more than one defendant, please attach additional sheets listing the above information and allegations as follows.)

II. Statement of Claim

For each claim, please include the following information on attached sheets:

1. State which of your federal constitutional or federal statutory rights have been violated.
2. State which defendant(s) have violated that particular right for each allegation.
3. State, with specificity, the facts and circumstances that gave rise to the violations or deprivations alleged.
4. State the harm or damage that resulted from the alleged violation or deprivation.

Allegation 1: \_\_\_\_\_

\_\_\_\_\_  
Supporting *Facts*:

Allegation 2: \_\_\_\_\_

\_\_\_\_\_

Supporting *Facts*:

Allegation 3: \_\_\_\_\_

\_\_\_\_\_

Supporting Facts:

(If more space is needed to explain any allegation or to list additional facts, attach additional pages)

III. Relief

You must request specific relief in your Complaint. State briefly exactly what you want the court to do for you (attach additional pages if necessary):

Date: \_\_\_\_\_  
\_\_\_\_\_  
Signature of Plaintiff

State of New Hampshire ]  
County of \_\_\_\_\_ ] ss

\_\_\_\_\_, being first duly sworn, upon oath, presents that (s)he has read and subscribed to the foregoing complaint, and states that the information contained therein is true and correct.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public/Justice of the Peace

**OR**

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

---

**JURY TRIAL DEMAND**

I demand a jury trial for all claims for which a jury trial is allowed.

YES ( ☐ )      NO ( ☐ )  
(**check one only**)

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Plaintiff

## APPENDIX F, SAMPLE SUMMONS FORM

AO 440 (Rev. 8/01) Summons in a Civil Action

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UNITED STATES DISTRICT COURT  
District of New Hampshire

Harry Smith

V.

SUMMONS IN A CIVIL CASE

John Jones  
Maryanne Jones  
Ann Jones  
Cathy Jones

CASE NUMBER:

TO: (Name and address of Defendant)

John Jones  
55 Pleasant St  
Concord, NH

***(PREPARE ONE SUMMONS FOR  
EACH DEFENDANT SHOWING  
INDIVIDUAL  
NAME & ADDRESS)***

---

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF/PLAINTIFF ATTORNEY

Harry Smith, Pro Se  
234 Piner Avenue  
Townline, NH 00000

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.

***ADD AN "ALSO ATTACHED:" TO LIST HERE ANYTHING ELSE THAT WILL BE  
SERVED WITH THE COMPLAINT***

James R. Starr  
CLERK

December 30, 2009  
DATE

Sally Brown  
(By) DEPUTY CLERK

## APPENDIX G-1, SAMPLE CIVIL MOTION FORMAT

UNITED STATES DISTRICT COURT - NH  
SOME SUGGESTIONS FOR THE PERFECT MOTION FORMAT

1/1/10

[USUAL CASE CAPTION. MAY USE "1ST PLAINTIFF/1ST DEFENDANT, ET AL."  
INCLUDE JUDGE'S INITIAL(S) AFTER CASE NUMBER, e.g. 09-cv-1-JL]

*[SOME SAMPLE TITLES]*

(PARTY'S) ASSENTED-TO MOTION TO/FOR (RELIEF)  
(PARTY'S) MOTION TO/FOR (RELIEF) WITH MEMORANDUM  
(PARTY'S) MOTION TO EXTEND TIME TO (DATE) TO (RELIEF)

TEXT OF MOTION USING NUMBERED PARAGRAPHS
------------------------------------------

PRAYER FOR RELIEF
-------------------

### CONCURRENCE STATEMENT, LR 7.1(c)

Motion is dispositive; no concurrence has been sought.

- O R -

Despite good faith attempts (describe), I have been unable to contact (names), regarding concurrence.

- A N D / O R -

(Name(s)) has been contacted and has no objection to the relief sought.

- A N D / O R -

(Name(s)) has been contacted and will object to the relief sought.

- O R -

As this is an ex parte motion, concurrence was not sought nor a copy sent to opposing counsel.

### MEMORANDUM STATEMENT, LR 7.1(a)(2)

Due to the nature of the motion, no memorandum is required.

- O R -

Memorandum is attached hereto.

### SIGNATURE LINE, Fed. R. Civ. P. 11

Signature line must include an original signature, typed or handwritten name, mailing address, email address and telephone number.

CERTIFICATE OF SERVICE, Fed. R. Civ. P. 5 & LR 5.1(d)

Certificate of service must include date and manner of service and what and to whom sent/served followed by another signature line.

**Sample offered for information only. Filings must be on 8 1/2 x 11" paper, font size no smaller than 10 cpi or 12 point, 1" margins, page-numbered bottom center, double spaced (except for quoted material, concurrence/memo statements, certificates of service), stapled but not permanently bound, may be top-punched.**

**APPENDIX G-2, USDCNH-101, MOTION FORM**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

\_\_\_\_\_  
Plaintiff(s)

v.

Case No. \_\_\_\_\_

\_\_\_\_\_  
Defendant(s)

MOTION TO \_\_\_\_\_  
(title of motion)

(attach additional sheets if necessary)

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

#### MEMORANDUM OF LAW

Pursuant to LR 7.1(a)(2), every motion shall be accompanied by a memorandum with citations to supporting authorities or a statement explaining why a memorandum is unnecessary.

- ☐ I have attached a supporting memorandum of law to this motion.
- ☐ I have NOT attached a memorandum of law because none is required (explain your reasoning below).

#### CONCURRENCES SOUGHT

Pursuant to LR 7.1(c), any party filing a motion other than a dispositive motion (a dispositive motion seeks an order disposing of one or more claims in favor of the moving party, for example, a motion to dismiss or a motion for summary judgment) shall certify to the court that a good faith attempt has been made to obtain concurrence/agreement in the relief sought. If concurrence is obtained, the moving party shall so note.

I certify the following (choose one):

- ☐ All parties have assented/agreed to this motion.
- ☐ I made a good faith attempt, but was unable to successfully obtain concurrence/agreement from all parties.
- ☐ I have NOT attempted to obtain concurrence/agreement because it is not required.

CERTIFICATE OF SERVICE

I hereby certify that this motion was served on the following persons on the date and in the manner specified below:

Person(s) served electronically (via ECF):

Person(s) served by mail. Please include address(es):

Person(s) served by hand:

Date of Service: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

## APPENDIX H, SAMPLE CIVIL OBJECTION FORMAT

US DISTRICT COURT - NH

1/1/10

### SOME SUGGESTIONS FOR THE PERFECT OBJECTION FORMAT

[USUAL CASE CAPTION. MAY USE "1ST PLAINTIFF/DEFENDANT, ET AL."  
INCLUDE JUDGE'S INITIAL(S) AFTER CASE NUMBER, e.g. 09-cv-1-JL]

*[SOME SAMPLE TITLES]*

(PARTY'S) OBJECTION TO (PARTY'S) MOTION TO/FOR (RELIEF)  
(PARTY'S) OBJECTION TO (PARTY'S) MOTION TO/FOR (RELIEF) WITH  
MEMORANDUM

TEXT OF OBJECTION

CONCLUSION

### MEMORANDUM STATEMENT, LR 7.1(a)(2)

Due to the nature of the motion, no memorandum is required.

- O R -

Memorandum is attached hereto.

### SIGNATURE LINE, Fed. R. Civ. P. 11

Signature line must include an original signature, typed or handwritten name, mailing address, email address and telephone number.

### CERTIFICATE OF SERVICE, Fed. R. Civ. P. 5 & LR 5.1(d)

Certificate of service must include date and manner of service and what and to whom sent/served followed by another signature line.

**Sample offered for information only. Filings must be on 8 1/2 x 11" paper, font size no smaller than 10 cpi or 12 point, 1" margins, page-numbered bottom center, double spaced (except for quoted material, concurrence/memo statements, certificates of service), stapled but not permanently bound, may be top-punched.**

## APPENDIX I, SAMPLE NOTICE OF APPEAL

(Form 1, Appendix of Forms, Federal Rules of Appellate Procedure)

### UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

\_\_\_\_\_  
Plaintiff(s)

vs.

CIVIL ACTION NO. (INCLUDING  
JUDGE'S INITIALS)

\_\_\_\_\_  
Defendant(s)

#### NOTICE OF APPEAL

Notice is hereby given that [ name here all parties taking the appeal ], (plaintiffs) (defendants) in the above named case,<sup>i]</sup> hereby appeal to the United States Court of Appeals for the First Circuit (from the final judgment) (from an order (describing it)) entered in this action on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

(Typed or Printed)

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No. \_\_\_\_\_

I certify that a copy of the foregoing NOTICE OF APPEAL was mailed/hand delivered to (name of defendant(s) or counsel for defendant(s)) at (address) on (date).

\_\_\_\_\_  
Original Signature, pro se

Typed Name, etc.

\_\_\_\_\_  
i. See Fed. R. App. P. 3(c) for permissible ways of identifying appellants.